

FILED

SEP 13 2010

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

THE STATE BAR OF CALIFORNIA
OFFICE OF PROBATION
TERRIE GOLDADE, No. 155348
SUPERVISING ATTORNEY
1149 South Hill Street
Los Angeles, California 90015-2299
Telephone: (213) 765-1000

PUBLIC MATTER

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:

NOLAN DELCAMPO,
No. 152113,

A Member of the State Bar

) Case No. **10-PM-08533-LMA**
)
) MOTION TO REVOKE PROBATION;
) MEMORANDUM OF POINTS AND
) AUTHORITIES; DECLARATION OF
) MICHAEL KANTERAKIS; EXHIBITS 1
) THROUGH 3; PROBATION REVOCATION
) RESPONSE FORM [Rule 560 *et seq.*, Rules of
) Procedure of the State Bar]

TO: The State Bar Court and Nolan DelCampo, Respondent:

PLEASE TAKE NOTICE THAT the State Bar of California, Office of Probation, hereby moves pursuant to Rules of Procedure of the State Bar of California, rules 560, *et seq.*, to revoke the probation imposed upon Nolan DelCampo ("Respondent") in prior disciplinary case no. 08-O-12090 and to impose upon Respondent the entire period of suspension of one year previously stayed by order no. S172346 of the Supreme Court filed on June 16, 2009. The State Bar further requests that Respondent be ordered to comply with rule 9.20, California Rules of Court, and that Respondent be placed on involuntary inactive enrollment pursuant to Business and Professions Code section 6007(d).

This motion is based upon the factual allegations that Respondent has violated the terms of probation imposed on Respondent by the aforementioned order as follows:

1. As a condition of probation, Respondent was ordered to comply with the State Bar Act and Rules of Professional Conduct and report such compliance under penalty of perjury

1 to the Office of Probation each January 10, April 10, July 10, and October 10. Respondent has
2 not complied as follows:

<u>Due</u>	<u>Filed</u>
10/10/09	10/9/09 (timely)
1/10/10	3/30/10 (late)
4/10/10	not filed
7/10/10	not filed

3
4
5
6 2. As a condition of probation, Respondent was ordered to, within one year of the
7 effective date of discipline—by July 16, 2010, provide to the Office of Probation satisfactory
8 proof of attendance at a session of Ethics School, and passage of the test given at the end of that
9 session. Respondent has not complied in that he has not provided to the Office of Probation
10 proof of attendance at Ethics School and has not provided proof of passage of the test given at
11 the end of the session.

12 This motion is also based on the attached Memorandum of Points and Authorities, the
13 attached Declaration of Michael Kanterakis, the attached exhibits, and all documents on file with
14 the court in this matter.

15 In accordance with rules 563(a) and 563(d) of the Rules of Procedure of the State Bar of
16 California, the Office of Probation requests that a hearing be held unless the Court, based upon
17 this motion and any response, determines that imposition of the discipline as requested above is
18 warranted.

19 **NOTICE – FAILURE TO RESPOND**

20 YOUR FAILURE TO FILE A RESPONSE WITHIN TWENTY (20) DAYS OF
21 SERVICE OF THIS MOTION WILL CONSTITUTE AN ADMISSION OF THE
22 FACTUAL ALLEGATIONS CONTAINED IN THIS MOTION AND MAY
23 RESULT IN THE IMPOSITION OF ACTUAL SUSPENSION PURSUANT TO
24 THE UNDERLYING DISCIPLINARY ORDER. ALSO, FAILURE TO
25 REQUEST A HEARING WILL CONSTITUTE A WAIVER OF YOUR RIGHT
26 TO A HEARING. SEE RULE 563(B)(3) OF THE RULES OF PROCEDURE
27 OF THE STATE BAR.

28 **NOTICE – INACTIVE ENROLLMENT**

YOU ARE HEREBY NOTIFIED THAT, PURSUANT TO BUSINESS AND
PROFESSIONS CODE SECTION 6007(d), IF THE STATE BAR COURT
RECOMMENDS ACTUAL SUSPENSION ON ACCOUNT OF A PROBATION
VIOLATION OR OTHER DISCIPLINARY MATTER, YOU MAY BE
INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE
STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION

1 TO ANY DISCIPLINE RECOMMENDED BY THE STATE BAR COURT.
2 SEE RULE 564, RULES OF PROCEDURE OF THE STATE BAR.

3 **NOTICE – COST ASSESSMENT**

4 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,
5 YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY
6 THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF
7 THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE
8 SECTION 6086.10. SEE RULE 280, ET SEQ., RULES OF PROCEDURE OF
9 THE STATE BAR.

10 Respectfully submitted.

11 THE STATE BAR OF CALIFORNIA
12 OFFICE OF PROBATION

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DATED: September 10, 2010

By: Terrie Goldade

Terrie Goldade
Supervising Attorney

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. RESPONDENT HAS NOT COMPLIED WITH THE TERMS OF PROBATION, AND
3 PROBATION SHOULD BE REVOKED

4 By order filed June 16, 2009, the Supreme Court imposed discipline on Respondent in
5 case no. S172346. The Supreme Court suspended Respondent for one year but stayed the
6 execution of the suspension on the condition that Respondent comply with all terms of probation.

7 As terms of probation, Respondent was ordered as follows:

8 1. comply with the State Bar Act and Rules of Professional Conduct and report such
9 compliance under penalty of perjury to the Office of Probation each January 10, April 10,
10 July 10, and October 10. Respondent has not complied as follows:

11 Due Filed

12 10/10/09 10/9/09 (timely)
13 1/10/10 3/30/10 (late)
14 4/10/10 not filed
15 7/10/10 not filed

16 2. within one year of the effective date of discipline—by July 16, 2010, provide to the
17 Office of Probation satisfactory proof of attendance at a session of Ethics School, and
18 passage of the test given at the end of that session. Respondent has not complied in that
19 he has not provided to the Office of Probation proof of attendance at Ethics School and
20 has not provided proof of passage of the test given at the end of the session.

21 Consequently, the State Bar Court should recommend revocation of Respondent's probation.

22 Attached hereto as Exhibit 1 is a certified copy of Respondent's registration card and
23 Respondent's membership records address history with the State Bar of California. Exhibit 1
24 will be offered as evidence based upon the certification of Membership Records and
25 Certification to show that Respondent was properly served in this proceeding.

26 A. Respondent Was Served With The Supreme Court Order.

27 It is presumed that Respondent was served with the disciplinary order of the Supreme
28 Court imposing a period of probation. The clerks of the reviewing courts have a duty to transmit
a copy of all decisions of those courts to the parties. (California Rules of Court, rule 8.532(a).)
Pursuant to Evidence Code section 664, there is a rebuttable presumption that such official duties

1 have been regularly performed. Therefore, absent any evidence to the contrary, it is presumed
2 that the Supreme Court clerk has complied with the duty to transmit to Respondent a copy of the
3 order placing Respondent on probation. (*In re Linda D.* (1970) 3 Cal.App. 3d 567; *People v.*
4 *Smith* (1965) 234 Cal.App.2d 407; *Fischer v. Lukens* (1919) 41 Cal.App. 358.)

5 B. Respondent's Violation of Probation Was Willful

6 Violation of a condition of probation must be willful to warrant discipline. (*In the Matter*
7 *of Potack* (1991 Review Dept.) 1 Cal. State Bar Ct. Rptr. 525.) A willful failure is demonstrated
8 by a general purpose or willingness to permit the omission and can be proven by direct or
9 circumstantial evidence. (*Durbin v. State Bar* (1979) 23 Cal.3d 461; *Zitny v. State Bar* (1966) 64
10 Cal.2d 787.) It does not require bad faith.

11 The burden of proof in a probation revocation proceeding is the preponderance of the
12 evidence. (Rule 561, Rules of Procedure.) For purposes of determining culpability, it is
13 misguided to distinguish between "substantial" and "insubstantial" or "technical" violations of
14 probation conditions. (*In the Matter of Potack*, supra.) Respondent's failure to comply with
15 probation demonstrates a lack of concern about professional responsibilities, and therefore,
16 probation should be revoked.

17 II. RESPONDENT'S VIOLATION OF PROBATION WARRANTS THE IMPOSITION
18 OF THE FULL STAYED SUSPENSION

19 In a probation revocation proceeding, the hearing judge may recommend actual
20 suspension up to the entire period of stayed suspension. (Rule 562, Rules of Procedure.) In this
21 instant case, the Supreme Court imposed a stayed suspension of one year. Based on the violation
22 of probation, the hearing judge should now recommend that Respondent be actually suspended
23 for the full period of stayed suspension.

24 III. UPON FINDING OF VIOLATION OF PROBATION, THE COURT MAY ORDER A
25 RESPONDENT PLACED ON INACTIVE STATUS.

26 In a probation revocation proceeding, the hearing judge may order the involuntary
27 inactive enrollment of a Respondent upon a finding that each of the elements of Business and
28 Professions Code section 6007(d) have occurred. (Rule 564, Rules of Procedure.) Those

1 elements have occurred where the Respondent is under an order of stayed suspension with a
2 period of probation and has violated that probation and where the hearing judge recommends a
3 period of actual suspension. (Business and Professions Code, section 6007(d)(1).) See *In the*
4 *Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532. The order
5 enrolling a respondent inactive shall be effective upon service unless otherwise ordered by the
6 judge. (Rule 564, Rules of Procedure.)

7 CONCLUSION

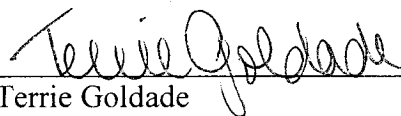
8 The Supreme Court has stayed Respondent's suspension and placed him on probation,
9 and Respondent has violated that probation. The State Bar requests that the hearing judge
10 recommend revocation of Respondent's probation and the imposition of one year of actual
11 suspension. Furthermore, the hearing judge should order Respondent placed on involuntary
12 inactive enrollment until the suspension is effective and order Respondent to comply with Rule
13 9.20, California Rules of Court.

14 Respectfully submitted,

15 THE STATE BAR OF CALIFORNIA
16 OFFICE OF PROBATION

17
18 DATED: September 10, 2010

By: _____


19 Terrie Goldade
20 Supervising Attorney
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am over eighteen years of age and not a party to the above entitled action. All statements made herein are true and correct and based upon my personal knowledge; if necessary, I could and would testify thereto.

3. My duties include establishing and maintaining files for those attorneys who have, as a result of State Bar disciplinary proceedings, been ordered either by the State Bar Court or the California Supreme Court to comply with certain terms and conditions of probation imposed on them.

5. It is the custom and practice of this office to maintain, in each Respondent's file, a copy of the court orders by which said Respondent is placed on probation. I am informed and believe that it is the custom and practice of the California Supreme Court to serve on each Respondent the disciplinary orders imposing discipline, including actual and stayed suspension and probation, on said Respondent.

-7-

1 7. A review of the probation file on Respondent shows that a disciplinary order
2 imposing probation is contained therein. A copy of said order, filed on June 16, 2009, is
3 attached hereto and incorporated by reference as Exhibit 2. A copy of the stipulation filed
4 December 9, 2008 is also included within Exhibit 2 for the Court's convenience. Pursuant to said
5 order, the terms and conditions of probation imposed on respondent include the following:

6 a. comply with the State Bar Act and Rules of Professional Conduct and report
7 such compliance under penalty of perjury to the Office of Probation each January 10,
8 April 10, July 10, and October 10. Respondent has not complied as follows:

<u>Due</u>	<u>Filed</u>
10/10/09	10/9/09 (timely)
1/10/10	3/30/10 (late)
4/10/10	not filed
7/10/10	not filed

12 b. within one year of the effective date of discipline—by July 16, 2010, provide
13 to the Office of Probation satisfactory proof of attendance at a session of Ethics School,
14 and passage of the test given at the end of that session. Respondent has not complied in
15 that he has not provided to the Office of Probation proof of attendance at Ethics School
16 and has not provided proof of passage of the test given at the end of the session.

17 8. As Custodian of Records, I have reviewed the entire contents of the probation file
18 on Respondent which shows that the disciplinary orders imposing probation and a letter
19 confirming the terms and conditions of probation, including suspension, were provided to the
20 Respondent on July 1, 2009.

21 9. The following documents, attached hereto and incorporated by reference
22 collectively as Exhibit 3, are contained in the Office of Probation file maintained on respondent:

- 23 a. Reminder letter mailed to Respondent mailed July 1, 2009 outlining the terms
24 and conditions of his probation.
- 25 b. Initial Probation Meeting Record Form dated August 19, 2009.
- 26 c. Respondent's Quarterly Report due October 10, 2009, filed October 9, 2009.
- 27 d. Warning letter mailed to Respondent mailed February 11, 2010 stating that
28 Respondent's quarterly report due January 10, 2010 had not been received,

1 that the Office of Probation did not intend to send any further reminder letters,
2 that his non-compliance could be referred which might lead to the imposition
3 of additional discipline, and that if he wanted to avoid a non-compliance
4 referral he was to file a motion with the State Bar Court because the Office of
5 Probation did not have authority to extend due dates or modify conditions.

6 e. Respondent's Quarterly Report due January 10, 2010, filed March 30, 2010.

7 f. Ethics School Verification Form dated August 25, 2010.

8 10. A complete review of the respondent's file reflects that none of the letters referred
9 to above were returned to the State Bar of California by the United States Postal Service as
10 undeliverable or for any other reason.

11 11. On August 14, 2009, Respondent left me a telephonic voice mail message
12 regarding his initial meeting. He asked that I call him back at (916) 969-4411.

13 12. On August 17, 2009, I telephoned Respondent at the number that he had left for
14 me. We set the meeting for Wednesday at 10 a.m. with Respondent to call me.

15 13. On August 19, 2009, Respondent telephoned me at the agreed-upon time and we
16 discussed the terms and conditions of his probation, including deadlines for quarterly reporting
17 and Ethics School.

18 14. On October 7, 2009, Respondent left me a telephonic voice mail message asking
19 how he could file a motion. That same day, I telephoned Respondent and informed him that he
20 could contact the State Bar Court to dispute disciplinary costs or ask how to file a motion.

21 15. On February 17, 2010, Respondent left me a telephonic voice mail message
22 stating that he had sent his quarterly report due in January 2010 a while back. He asked that I
23 call him at (916) 969-4411.

24 16. On February 25, 2010, I telephoned Respondent at the number he had asked me to
25 call. I left him a telephonic voice mail message asking him to submit his quarterly report for
26 January 2010 and/or to call me.

27 17. On August 25, 2010, I reviewed documentation provided by the Office of the
28 Chief Trial Counsel to the Office of Probation regarding attendees at Ethics School; the Office of

1 the Chief Trial Counsel puts on the sessions of Ethics School and maintains documentation about
2 the attendees at each Ethics School. According to that documentation, I determined that R had
3 not attended Ethics School since October 20, 2005—almost 4 years before the effective date of
4 the discipline at issue in this matter.

5 18. To date, Respondent has not called me although I did file his January 2010 report
6 as of the date it was received by the Office of Probation, March 30, 2010.

7 19. To date, the Office of Probation has not received Respondent's quarterly reports
8 for April or July 2010. To date, the Office of Probation has not received proof that Respondent
9 has attended a session of Ethics School.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this 8th day of September, 2010 at Los Angeles, California.

13 M. A. Kanterakis
14 Michael Kanterakis
15 Declarant
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 **DECLARATION OF SERVICE BY CERTIFIED MAIL**
3

4 **CASE NUMBERS:** New PM No.

5 I, the undersigned, over the age of eighteen (18) years, whose business address and
6 place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles,
7 California 90015, declare that I am not a party to the within action; that I am readily
8 familiar with the State Bar of California's practice for collection and processing of
9 correspondence for mailing with the United States Postal Service; that in the ordinary
10 course of the State Bar of California's practice, correspondence collected and processed
11 by the State Bar of California would be deposited with the United States Postal Service
that same day; that I am aware that on motion of party served, service is presumed invalid
if postal cancellation date or postage meter date on the envelope or package is more than
one day after date of deposit for mailing contained in the affidavit; and that in accordance
with the practice of the State Bar of California for collection and processing of mail, I
deposited or placed for collection and mailing in the City and County of Los Angeles, on
the date shown below, a true copy of the within

12 ***MOTION TO REVOKE PROBATION; MEMORANDUM OF POINTS AND***
13 ***AUTHORITIES; DECLARATION MICHAEL KANTERAKIS; EXHIBITS 1***
14 ***THROUGH 3; PROBATION REVOCATION RESPONSE FORM [Rule 560, et seq.,***
Rules of Proc. of the State Bar]

15
16 in a sealed envelope placed for collection and mailing as Certified mail #7160 3901 9844
3984 8901 mailed at Los Angeles, on the date shown below, addressed to:

17 Nolan A. Del Campo
18 Law Ofc Nolan DelCampo
19 3900 Villa Ct
Fair Oaks, CA 95628

20
21 in an inter-office mail facility regularly maintained by the State Bar of California addressed
22 to:


23 **N/A**

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed at Los Angeles, California, on the date shown
below.

26 **DATED:**

27 September 10, 2010

SIGNED:


Mia Hibler
Declarant

Counsel for Respondent	(for Court's use)
In the Matter of	Case No(s). _____ - PM- _____
Bar #	PROBATION REVOCATION RESPONSE (Rule 563, Rules of Procedure)
A Member of the State Bar of California ("Respondent")	

As required by rule 563(b)(1), Rules of Procedure, Respondent attaches one or more declarations to this form which set forth the facts upon which my opposition to the motion to revoke probation is based.

(1) ☐ Respondent requests a hearing in this matter and intends to participate.

OR

(2) ☐ Respondent requests that this proceeding be resolved on the pleadings without any hearing.

If you checked box (1), check one of the following:

(a) ☐ Respondent requests the opportunity to cross-examine the person(s) who executed declaration(s) in support of the motion to revoke my probation.

(b) ☐ Respondent does not request the opportunity to cross-examine the person(s) who executed declaration(s) in support of the motion to revoke my probation.

Date: _____

(Signature)

(Print Name)